IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.4014 OF 1998
WITH
SPECIAL CIVIL APPLICATION NO.9066 OF 1998

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

J.B. VAISHNAV & ORS.

Versus

STATE BANK OF INDIA & ORS.

Appearance:

1. Special Civil Application No. 4014 of 1998
MR. N.K. MAJMUDAR for Petitioner Nos. 1-5
MR. S.B. VAKIL, SR. ADVOCATE with
A.S. VAKIL for Respondent Nos. 1-3
DELETED for Respondent No. 4
MS. P.J. DAVAWALA for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 13/04/2004

COMMON ORAL JUDGEMENT

1. Special Civil Application No.4014 of 1998 is

filed by one Mr.J.B.Vaishnav along with four other petitioners, who have retired in the officers' grade from respondent no.2, State Bank of Saurashtra, during the period between 1st November, 1992 to 31st October, 1994.

While Special Civil Application No.9066 of 1998 is filed by one Chhotalal N.Gandhi and thirty other petitioners, who also have retired in the officers' grade from the same Bank i.e. State Bank of Saurashtra, respondent no.2, between 1st November, 1992 and 31st October, 1994.

2. In both the petitions, it is prayed that the action of the respondents of not giving the gratuity to the members of the petitioner no.1-association on the basis of their last pay drawn, who have retired from service before 1st November, 1994, be quashed and set aside. It is also prayed that the action of the respondent nos. 1 to 4 of fixing the cut off date as 1st November, 1994 for payment of gratuity even though revised wages were given effect from 1st July, 1993 and arrears were also paid from the same date, be quashed and set aside; that the respondents, their agents and servants be directed to give the amount of gratuity to petitioner no.2 and all other members of petitioner no.1-association, who retired before 1st November, 1994; that the respondents be directed to make the payment of amount of gratuity to the members of the association by calculating the same as per the revised pay, which was paid with effect from 1st July, 1993; and, that Clause-7 of Annexure-A, a circular for revision of salary of officers/employees governed under the Bank of Baroda (Officers') Service Regulations, 1979 be declared as inconsistent with the provisions of Section-4 of the Payment of Gratuity Act, 1972 ("the Act" for short) read with Section-14. The prayers in clauses (F) and (G) of paragraph-11 are repetition of earlier prayers.

The petitioners also prayed for the interim relief by way of a direction to the respondents, their agents and servants to release the difference of gratuity on the basis of the revised pay scale and also an injunction restraining the respondents from taking 1st November, 1994 as the cut off date during the pendency and final disposal of the petition.

3. In these petitions, being Special Civil Application Nos.4014/1998 and 9066/1998, the petitioners have placed the details of every individual in a tabular form at Annexure-A. Therein, along with other details,

it is mentioned as to what was the old basic pay of the petitioners and what is the revised basic pay as on 1st November, 1992. It is also stated therein as to what is the amount of gratuity actually paid to these petitioners and what is required to be paid to them according to their claim.

4. The respondent no.2, State Bank of Saurashtra, by its circular dated 13th July, 1995, a copy of which is placed at Annexure-B in both the petitions, circulated to all the officers of the bank the Regulations titled as "Staff Supervising: Salary Revision For Officer Employees Governed by the SBS (Officers') Service Regulation-1979". A Joint Note (consensus) arrived at between the Indian Banks' Association on one hand and the Officers' Association on the other, is enclosed to this circular. At Annexure-C, an `Annexure-I' to the Joint Note is produced. Like the other petition, being Special Civil Application No.3226 of 1998, the main controversy involved in these petitions is about the non-payment of the gratuity on the basis of the revised pay-scale.

5. Mr.N.K.Majmudar, learned Advocate for the petitioners, contended in the first instance that the consensus arrived at between the parties is not binding to the petitioners because by the time, the consensus was arrived at, the petitioners had retired from service. He further submitted that the date prescribed in sub.clause-(iv) of Clause-15, which pertains to `making the payment of arrears of the benefits under various provisions' is `01/11/1994'. He submitted that so far as the `payment of gratuity' is concerned, this date is wholly unjust and arbitrary and, therefore, liable to be quashed and set aside.

6. The learned Advocate for the petitioners relied upon the following decisions, as is relied on in other petition, being Special Civil Application No.3226 of 1998. He contended that the petitioners are entitled to the gratuity on the basis of the revised pay-scale because that is `the last wage drawn' by the petitioners.

(i) 1999(1) C.L.R.291;

(ii) 2000(3) C.L.R. 968;

(iii) 1998 (7) S.C.C. 221;

(iv) A.I.R. 1986 S.C. 1571;

(v) Judgement dated 21st February, 1992 of Kerala

High Court (Coram:Hon'ble Mr.Justice M.Ramachandran) in Writ Petition No.3502 of 2000 (P);

(vi) Judgement dated 20th December, 2002 of Karnataka High Court (Coram:Hon'ble Mr.Justice N.Kumar) in Writ Petition No.20780-20789/97 C/W W.P. 13575-13592/97, W.P.31085/96, W.P.21610/97 and W.P.35137/97 (8-Res);

(vii) A.I.R. 1984 S.C. 1842;

(viii) 1983 S.C. 130; and,

(ix) A judgement of this Court in the matter of Rajkot Municipal Corporation vs. Anirudh Fulshankar Shukla, reported at 1999-II L.L.J. 830.

7. Mr.S.B.Vakil, learned Senior Counsel for the respondent-Banks, submitted that firstly the petition is barred by delay and latches, the Joint Note (consensus) on the basis of which, the gratuity is paid to all these petitioners, which is challenged, is dated 23rd June, 1995. Whereas the petitions are filed on 8th May, 1998. He submitted that the consensus was arrived at between the Indian Banks' Association on one hand and the Officers' Association on the other. The consensus was arrived at as a package after taking into consideration all relevant aspects including the `financial burden', which is going to be caused on implementation of various provisions of the consensus. It was only after careful consideration that the various dates were agreed to, to give effect and pay the arrears arising under different heads, as provided in Clause-15 of the consensus. He submitted that therefore, there is nothing unjust or arbitrary in fixing different dates for payment of arrears under different heads.

8. The learned Senior Counsel submitted that an affidavit-in-reply is filed, replying all the contentions raised in the petition. On behalf of the respondent-Bank, it is stated in paragraph-3 of the affidavit-in-reply that, the service conditions of the petitioners are governed by, "The State Bank of Saurashtra (Officers') Regulations, 1979". The petitioners have not challenged these regulations, but, have challenged only one of the provisions of bipartite settlement reached between the association. He submitted that, therefore, these petitions are not maintainable in their present form. The learned Senior Counsel also submitted that the petitioners have already accepted the

amount of gratuity and thus, the transaction is already completed. He submitted that in view of the decision of the Apex Court reported at 1991 (2) S.C.C. 104. Such completed transaction cannot be reopened. He also submitted that the petitioners cannot be allowed to approbate and reprobate inasmuch as on one hand, they disown the said consensus (Joint Note) on the ground that they were not represented during the negotiations and on the other hand, they have already accepted part of the benefits and are claiming other benefits on the basis of the said package. The learned Senior Counsel relied upon the following decisions of the Apex Court :

(i) In the matter of State of Rajasthan & Anr. vs. Amrutlal Gandhi & Ors., reported at 1997 (2) S.C.C. 342; and,

(ii) In the matter of State Government Pensioners' Association & Ors. vs. State of Andhra Pradesh, reported in A.I.R. 1986 S.C.1907.

9. In view of the foregoing discussion and for the reasons recorded in the judgement rendered in Special Civil Application No.3226 of 1998, none of the contentions raised by the petitioners in these petitions are found acceptable. In the result, both these petitions deserve to be dismissed. The same are dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)
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